LETTERS TO THE EDITOR

PROHIBITION AND POPULAR SOVEREIGNTY

SIR:

I have read with interest the article in the August number of THE NORTH AMERICAN REVIEW entitled *Principles Underlying Prohibition*, by Wayne B. Wheeler. Chief Justice White stated in the specially concurring opinion in *Rhode Island v. Palmer* (253 U. S. 350, 388; the case in which seemingly the so-called Eighteenth Amendment was pretended to be attacked, upon grounds in no wise going to the real fundamental principles involved):

> I profoundly regret that in a case of this magnitude, affecting, as it does, an amendment to the Constitution dealing with the powers and duties of the national and state governments, and intimately concerning the welfare of the whole people, the Court has deemed it proper to state only ultimate conclusions, without an exposition of the reasoning by which they have been reached.
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> I appreciate the difficulties which a solution of the cases involves and the solicitude with which the Court has approached them, but is seems to my mind that the greater the perplexities the greater the duty devolving upon me to express the reasons which have lead me to the conclusion that the amendment accomplishes and was intended to accomplish the purposes now attributed to it in the propositions concerning that subject which the Court has just announced and in which I concur.

Since Justice White thus spoke, without, however, expressing any either of his own or of the Court's reasoning therefor, it is indeed refreshing and interesting, if not very instructive, to have put for the first time in black and white by Mr. Wheeler, the leader of the Federal Prohibition forces, the reasons which he conceives to justify the Federal functionary government in attempting and pretending to go through the motions of granting to itself an entirely new and theretofore concededly unpossessed governmental power without the sovereign people of the United States (who solely and alone are the essential source, fountain-head and owner of all governmental power in America) being at all consulted or having the least thing to do with the usurption by the Federal functionary government under consideration.

Mr. Wheeler states that the "right to secure and enforce Prohibition" is based upon two fundamental principles, as follows:

> The right to secure and enforce Prohibition in any unit of government is based upon two fundamental principles which have been established by the decisions of Courts of last resort in the United States. The first one is that the people have a right to better their conditions whenever they proceed in a legal and orderly manner to accomplish that end. . . . The next important principle is that the beverage liquor traffic is so vicious in its influence and results that it has no inherent right to exist.

It is true that Mr. Wheeler pretends to make quotations from United States Supreme Court opinions without giving the case or report wherein it

is claimed by him that the language he pretends to quote verbatim was used; and it is also noticeable that in the two single instances in which he states the report or case he mixes up his own language and puts it into the mouth of the Court as though it were the Court's own language. Such a practice is, of course, entirely unfair not merely to those who may desire to answer him, but to the Court itself. But I will not consume time to quarrel with him further on that score. The props of his entire contention can too easily be knocked from under him by the statement of a single indisputable fundamental principle (strangely entirely omitted in the arguments of attacking counsel in Palmer case), upon which this country exists as a Republic, or at any rate did prior to the so-called Eighteenth Amendment, or usurpation by Federal functionaries as it should more properly be termed. Government by functionaries in violation of the last lawfully expressed will of the sovereign People of the United States, and any true "Republic" or "republican form of government", cannot exist together and at the same time; the plain and conclusive reason being that they are diametrically and unalterably opposed the one to the other.

The one (Mr. Wheeler's so-called inherent right of government) is the "anarchistic" (*U. S. v. Williams*, 194 U. S. 279, 292–3), "Bolshevistic", foreign, monarchical doctrine, lawfully impossible in America, of "functionary or creature sovereignty", repudiated by our forefathers from the time of the War of the Revolution and Declaration of Independence by which Americans put an end, it was thought and hoped in America forever, to the ridiculous pretentions and usurpations of mere "functionaries",—at that time the British functionary King and British functionary parliament, "making believe" and "playing at" sovereignty over the people. That (erroneous) principle of "functionary sovereignty" and the "origin of monarchy and kings" and other usurpers of governmental rights, was stated thus by a well-known writer of the time of the Revolution; in a pamphlet entitled *Common Sense:*

> The chief of the band contrived to lose the name of "robber" in that of "monarch"; and hence the origin of Monarchy and Kings.

And in a certain other well-known pamphlet he well said:

> That men mean different and separate things when they talk of Constitutions and government is evident—or why are the terms distinctly and separately used? A Constitution is not the act of a government, but of a people making a government; and government without a Constitution is power without a right.
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> All power exercised over a Nation must have some beginning. It must be either delegated or assumed. There are no other sources. All delegated power is a trust, and all assumed power is usurpation. Time does not alter the nature and quality of either. . . . The final controlling power, therefore, and the original constituting power are one and the same. . . .
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> A government on the principles on which constitutional government arising out of society is established cannot have the right of altering itself. If it had, it would be arbitrary itself. It might make itself what it pleased; and whenever such a right is set up, it shows there is no Constitution.

> The right of reform is in the Nation (People) in its original sovereign character, and the Constitutional method would be a general Convention elected for that purpose. There is, moreover, a paradox in vitiated bodies reforming themselves.

The other (correct or American) principle, on the other hand, has been emphasized and stated so many times by the United States Supreme Court and every other court in America entitled to the name, that it seems strange that it needs to be repeated. But as Mr. Wheeler seems to confuse government and the sovereign people who created government, and who alone were competent to create government, it may not be out of place to quote from the unanimous holding of that Court in the well-known case of *Yick Wo v. Hopkins* (118 S. U. 356, 376):

> Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts.

It requires the inherent, unlimited, inalienable, indivisible, and humanly and territorially omnipotent power of the sovereign owner of all governmental power in America to make or to unmake Constitutions, State, Federal, or combined, or to grant to government, or to take from government, State, Federal or combined, any governmental power whatever. Mere governments, all, one or many, are wholly incompetent, without lawful power or jurisdiction, to do or to attempt any such thing. Why? The reason is plain; it is because governments are not themselves sovereign, and a written Constitution is nothing more nor less than the sovereign command reduced to writing. It is because the truly sovereign People of the United States, the sole and exclusive source, fountain-head and owner of all governmental powers in America, and not mere government or governmental functionaries, own all governmental power in America, State, Federal and Reserved. As stated by Chief Justice Marshall in *Semperyreac v. U. S.* (7 Peters 222, 241): it is "incontestable that a grantor can convey no more than he possesses (owns)."

As stated in *Lane County v. Oregon* (7 Wall. 71, 76), quoting from *The Federalist*, No. 46, Ford Ed. page 310: "The Federal and State governments are, in fact, but different agents and trustees of the people, constituted with different powers and designated for different purposes"; and in the same number of *The Federalist* the text immediately goes on to say:

> The adversaries of the Constitution seem to have lost sight of the people altogether in their reasoning on this subject. . . . These gentlemen must be reminded of their error. They must be told that the ultimate authority, wherever the derivative may be found, resides in the people alone; and that it will not depend on . . . the different governments, whether or which of them, will be able to enlarge its sphere of jurisdiction at the expense of the other.

But it will depend, as that language of *The Federalist* in effect tells us, when it comes to "enlarging" the powers of either government at the expense of the other, upon, and solely upon, the people of the United States, truly sovereign over all governments.

Government by functionaries in violation of the last lawfully expressed command of the sovereign People of the United States must cease, or the Republic in America is at an end, and "functionary sovereignty" has usurped and enthroned itself in the seat of the sovereign. When the truly sovereign People of America come to see and understand this, they will not endure it.

Whether or not it would be a wise thing for the Federal functionary government to have the power "to regulate" the intra-State liquor traffic, may be a fairly debatable question. But that the Federal government is not now and never has been in lawful possession of that governmental power, is as certain and unquestionable as is the principle upon which this Nation was founded, that the People alone are sovereign in America.

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STABILITY IN PUBLIC SERVICE

SIR:

The interesting and valuable paper by Walter Robb in your June number on *The Plight and Hope of the Philippines* suggests the thought that our policy, or rather lack of policy, in the Philippines is now showing what some people had prophesied would come—a corrupt local government with financial chaos. Has it not occurred to you that our system of frequent changes of administration, which is our internal policy, is entirely inadequate for colonial stability? If we desire to handle our colony in a business-like way we must induce our representatives whom we send over there to take up their duties as a life work. The only nation which has made a success of handling a remote foreign dependency has been Great Britain. A young man who has ambition to do work in India announces that fact in college. He is given special studies in addition to his regular course. When graduated he is assigned to a position for life and given a fair salary with prospects of promotion. Every four years he is required to come home in summer so that a too long residence in a tropical climate will not enervate him. On retirement from age or ill health he is given a pension.

Contrast our system. Each change of administration may result in his retirement. His experience is lost and his successor starts as a raw beginner. This is similar to our consular service. New consuls every few years with small pay. English consuls are paid well, promoted, and retained in office as long as they are satisfactory.

Unless we imitate the English system and offer a permanent office to our young men who may have the ambition to take up such life, we shall get nowhere.

SIDNEY C. EASTMAN.

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